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Supreme Court of the United States

OCTOBER TERM, 1964 5

NO. [redacted] 123

JONES & LAUGHLIN STEEL CORPORATION,
Petitioner,

v.

GRIDIRON STEEL COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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May 10, 1965

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review an order of the United States Court of Appeals for the Sixth Circuit, entered in the above-entitled case on December 11, 1964, dismissing petitioner's appeal to that court; petition for reconsideration denied February 11, 1965.

CITATIONS TO THE OPINIONS BELOW

The order of the court of appeals is not reported. It appears in the appendix to this petition, *infra*, p. 10 No separate opinion was filed by the court of appeals. The order of the court of appeals denying reconsideration appears in the appendix to this petition, *infra*, p. 11.

The judgment of the district court appears in the appendix to this petition, *infra*, p. ... The district court entered memorandum findings of fact and conclusions of law. They are reported only at 142 United States Patents Quarterly 264.

JURISDICTION

The order dismissing petitioner's appeal, review of which is sought by this petition, was entered by the court of appeals on December 11, 1964. Reconsideration was denied on February 11, 1965. Jurisdiction of this court is invoked under 28 U.S.C. §1254(1). Cases believed to support the jurisdiction are:

Leishman v. Associated Electric Co., (1943) 318 U.S. 203; and

Department of Banking v. Pink, (1942) 317 U.S. 264.

QUESTIONS PRESENTED

(1) Under Civil Rule 6(a), as amended effective July 1, 1963, is a notice of appeal filed "within the time fixed by law" when the thirtieth calendar day following entry of the judgment appealed from falls on a Saturday and the notice is filed on the following Monday?

(2) If the thirtieth calendar day following the entry of a judgment in a civil action falls on a Saturday, is the amendment of Civil Rule 6(a), making that Saturday *dies non* in computing the appeal time, a nullity if the office of the clerk of the district court is open for business on that Saturday?

STATUTE INVOLVED

28 U.S.C. 2107. TIME FOR APPEAL TO COURT OF APPEALS.

"Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree."

* * * * * * *

RULES OF CIVIL PROCEDURE INVOLVED*

CIVIL RULE 6. TIME.

"(a) Computation. In computing any period of time prescribed or allowed by these rules, *by the local rules of any district court,* by order of court, or by any applicable statute, the day of the act, event, or default [after] *from* which the designated period of time begins to run [is] *shall* not [to] be included. The last day of the period so computed [is to] *shall* be included, unless it is a *Saturday,* a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is [neither] *not a Saturday,* a Sunday, [nor] *or* a *legal* holiday. * * *." [374 U.S. 878; 308 U.S. 669]

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*Matter deleted by the 1963 amendment to the Rules is shown in brackets and matter added by the amendment is shown in italics.

Rules of Civil Procedure Involved.

CIVIL RULE 73. APPEAL TO A COURT OF APPEALS.

"(a) WHEN AND HOW TAKEN. When an appeal is permitted by law from a district court to a court of appeals the time within which an appeal may be taken shall be 30 days from the entry of the judgment appealed from * * *.

"A party may appeal from a judgment by filing with the district court a notice of appeal. * * *" [335 U.S. 933-4]

CIVIL RULE 77. DISTRICT COURTS AND CLERKS.

"(c) CLERK'S OFFICE AND ORDERS BY CLERK. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except *Saturdays,* Sundays, and legal holidays[.], *but a district court may provide by local rule or order that its clerk's office shall be open for specified hours on Saturdays or particular legal holidays other than New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day.* * * *." [374 U.S. 890; 308 U.S. 758].

STATEMENT OF THE CASE

This is a civil action which the respondent, plaintiff below, brought to recover damages for an alleged breach of a patent license agreement. Jurisdiction of the district court was founded upon diversity of citizenship between the parties. Petitioner denied any breach of the license or any liability, and the case was tried on the merits by the district court sitting without a jury. The district court entered a judgment, *infra*, p. 11, on Thursday, July 2, 1964, granting in part and denying in part the relief prayed for.

Both parties appealed. Respondent filed its notice of appeal on Saturday, August 1, 1964, the thirtieth calendar day following entry of the judgment. Petitioner, relying upon the literal provision of Civil Rule 6(a) filed its appeal on the following Monday, August 3.

Respondent moved to dismiss petitioner's appeal. The court of appeals granted the motion, holding that petitioner's appeal had not been filed "within the time fixed by law"; *infra*, pp. 10-11. A petition for reconsideration was denied on February 11, 1965, *infra*, p. 11.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

(1) This case involves a question as to the timeliness of taking appeals under the Federal Rules of Civil Procedure, which has not been but should be decided by this Court. This Court has taken jurisdiction of numerous cases raising the same or like questions prior to the 1963 amendment to the rules. Such cases include:

Union National Bank v. Lamb, (1949) 337 U.S. 38;

Leishman v. Associated Electric Co., supra;

Thompson v. I.N.S., (1964) 357 U.S. 384;

United States v. Schaefer Brewing Co., (1958) 356 U.S. 227; and

Pyramid Motor Co. v. Ispass, (1947) 330 U.S. 695.

The effect of the 1963 amendment has not been passed upon by this court, nor, so far as counsel for petitioner have been able to ascertain, has it been petitioned to do so. The same considerations that moved the Court to review the above-cited cases are present here.

(2) The questions raised herein are of public importance and extend far beyond the interests of the litigants to this action. They may arise in any private civil action in which a judgment is entered on a Thursday, (i.e., in one case out of five), since the thirtieth calendar day following entry of the judgment will fall upon a Saturday.

(3) The decision below is contrary to the intended purpose of the 1963 amendment to Rule 6(a) stated by the Advisory Committee on Rules, and its *ratio decidendi*

is believed by petitioner to be in conflict with apposite decisions of this court and other lower Federal courts.

Even prior to the 1963 amendment, Civil Rule 6(a) specifically excluded certain days in computing the last day of "30 days from the entry of the judgment" allowed by 28 U.S.C. 2107 and Civil Rule 73(a) for the taking of an appeal:

Union National Bank v. Lamb, supra;

Columbia Lumber Co. v. Agostino, (C. A. 9, 1950) 184 F.2d 731, 733;

Wilson v. Southern Ry. Co., (C.A. 5, 1945) 147 F.2d 165, 166; and

Prudential Oil & Minerals Co. v. Hamlin, (C.A. 10, 1958) 261 F.2d 626.

The 1963 amendment added Saturdays to the list of excluded days without any exception or qualification whatsoever; in submitting the 1963 amendments to this court, the Advisory Committee on Rules stated, 28 U.S.C.A. Rule 6, Pocket Part, p. 50:

> "Saturday is to be treated in the same way as Sunday or a 'legal holiday' in that it is not to be included when it falls on the last day of the computed period * * *."

The lower court, however, refused (*infra,* p. 10) to treat Saturdays the same as Sundays or legal holidays, basing its conclusion on the facts (i) that by the 1963 amendment Civil Rule 77(c) was amended to permit a district court to provide by local rule that its clerk's office shall be open on Saturdays and certain

legal holidays, (ii) that Criminal Rule 56 does not treat Saturdays as *dies non,* and (iii) that the clerk's office in the Northern District of Ohio, in which office the notice of appeal herein was filed, had been open on August 1, 1964. It cited its own order filed July 16, 1963, *infra,* p. 12.

Criminal Rule 5(b) is plainly irrelevant. The essential question here is whether this court, by its concurrent promulgation of the "Saturday" *exclusion* and the "local rules of any district court" *inclusion* in Civil Rule 6(a), intended (i) to authorize the lower courts, by local rule, to alter, locally, the substantive provisions of Civil Rule 6(a), or whether (ii) it intended only to add another category of specific situations to which the substantive provisions of the rule would apply. The lower court has ruled in favor of the first alternative, in seeming disregard of Civil Rule 83.

CONCLUSION

The issues raised are real and substantial ones in the interpretation and application of the Federal Rules of Civil Procedure. They are of public importance and meet this court's criteria for the granting of this petition.

Respectfully submitted,

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May 10, 1965

APPENDIX

Orders of the Court of Appeals

(Caption Omitted)

Filed: December 11, 1964

This cause is before this Court on motion of plaintiff-appellee for an order dismissing the appeal of the defendant-appellant herein for the reason that the notice of appeal was not filed within the time fixed by law. (Section 2107, Title 28, U.S.C.)

The notice of appeal in question was filed on Monday, August 3, 1964, the 32nd day after the entry of the judgment from which appeal is taken. The question arises whether it should have been filed on Saturday, August 1st, which was the 30th day after judgment. Rule 56 of the Federal Rules of Criminal Procedure provides, "The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Sundays and legal holidays." Subsequent to the amendment of Rule 77(c) of the Federal Rules of Civil Procedure, effective July 1, 1963, this Court issued an order to all clerks of District Courts in the Sixth Circuit providing "(T)hat the clerks' offices be open for business on Saturday mornings until such time as the proposed amendment to Rule 56 of the Federal Rules of Criminal Procedure becomes effective, * * *"

Upon consideration of the foregoing, the clerk's office being open on Saturday, the Court finds that the notice of appeal of the defendant-appellant was not filed

within the time fixed by law and it is therefore ordered that the appeal be and the same is hereby dismissed.

Filed: February 11, 1965

This cause is before the Court on motion of Jones & Laughlin Steel Corporation, defendant-appellant, for reconsideration of the order of this Court of December 11, 1964, dismissing the cross-appeal herein.

Upon consideration of said motion, the Court finds that it is not well taken and it is hereby ordered that said motion be and the same is denied.

Judgment of the District Court

Filed: July 2, 1964

This cause having come on for trial before the court and, upon consideration, the court finds for the plaintiff.

IT IS, THEREFORE, ORDERED that the plaintiff recover from the defendant the total amount of Twelve Thousand Two Hundred Eighty-Nine Dollars and Ninety-Five Cents (12,289.95) and costs herein.

Order of the Court of Appeals for the Sixth Circuit

Filed: July 16, 1963

In the Matter of the Opening of Clerks' offices on Saturday.	ORDER

The matter of the opening of the Clerks' offices on Saturdays having come before the Court and the Judicial Council of the Sixth Circuit and,

It appearing to the Court that Rule 77(c) of the Federal Rules of Civil Procedure has been amended, effective July 1, 1963, to read in part as follows: "The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but a district court may provide by local rule or order that its clerk's office shall be open for specified hours on Saturdays or particular legal holidays other than New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day." And,

It further appearing to the Court that Rule 56 of the Federal Rules of Criminal Procedure reads in part as follows: "The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Sundays and legal holidays." And a proposed amendment to said rule, by which the clerks'

offices are not required to be open on Saturday has not yet become effective,

It is hereby ordered by said Court and Council that the clerks' offices be open for business on Saturday mornings until such time as the said proposed amendment to Rule 56 of the Federal Rules of Criminal Procedure becomes effective, and

It is further ordered that the Clerk of this Court send a copy of this order to the Chief Judges of all the District Courts in the Sixth Circuit and to all of the clerks and deputy clerks in charge of clerks' offices in said circuit.